

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF XXXX)	XXXXX JUDICIAL CIRCUIT
)	
State of South Carolina,)	Warrant No.: XXXX
)	Indictment No.: XXXX
v.)	
)	
XXXXX,)	MEMORANDUM IN SUPPORT OF
)	DEFENDANT'S MOTIONS TO SUPPRESS
Defendant.)	UNLAWFULLY SEIZED EVIDENCE AND
)	INVOLUNTARY STATEMENTS

The Defendant, by and through the undersigned Counsel, moves for the suppression of all unlawfully seized evidence by the government and involuntary statements made by the Defendant to any government agent in violation of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3, 10, and 14 of the South Carolina Constitution (due process, unlawful search and seizure, unreasonable invasion of privacy, right to against self-incrimination, right to counsel, and fair trial). See U.S. Const. Amends IV, V, VI, XIV; S.C. Const. art. I §§§ 3, 10, 14.

SUPPRESSION ISSUES

The relevant suppression issues before the Court are as follows:

- (1) Unlawful Traffic Stop (Unreasonable Seizure)
- (2) Unlawful Detention due to Prolonged Traffic Stop (Unreasonable Seizure)
- (3) Unconstitutional Warrantless Search
- (4) Unreasonable Invasion of Privacy
- (5) Involuntary Statements to Police

[Remainder of Page Intentionally Left Blank]

OUTLINE OF ARGUMENTS

The arguments in support of the Defendant's motions to suppress are as follows:

(1) **Unlawful Traffic Stop (Unreasonable Seizure)**

a. No Probable Cause of a traffic violation or Reasonable Suspicion of criminal activity to justify the traffic stop.

i. Dash Cam Video Recording

1. 2:07:14 (Start) – 2:07:48 (blue lights) – 2:07:55 (traffic stop)
2. Bus tire never strikes the line

ii. *Brendlin v. California*, 551 U.S. 249, 259 (2007) (passenger has standing to challenge the reasonableness of the initial traffic stop).

iii. Distinct from *State v. Alston*, 422 S.C. 270, 811 S.E.2d 747 (2018)

1. Failure to maintain lane – S.C. Code § 56-5-1900 – “(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and (2) shall not be moved from the lane until the driver has first ascertained that such movement can be made safely.”
2. Never gave Alston the warning ticket or returned his paperwork
3. Observed repeatedly weaving within the lane of travel and striking the dotted lines making his lane (“drifting several times and striking the dividing lines”).

b. Officer's testimony is not credible based on the prior pre-textual seizures by the police of commercial buses for alleged minor traffic violations at the same exit or near the same exit on a regular basis to conduct an unconstitutional search of the luggage on the seized bus combined with the officers' actions during the stop.

i. Incident Reports of stops

1. 6/19/18–6/23/18–11/07/18–12/05/18–2/27/19–3/27/19

ii. Preliminary Hearing Transcript – Deputy XXX

1. Admitted to following the bus (Tr. 5, ll.5-7).
2. “Probably stopped about 20 or 30 buses.” (Tr. 5, ll. 17-21).

(2) Unlawful Detention Due to Prolonged Traffic Stop (Unreasonable Seizure)

a. The police unlawfully extended the detention beyond the purpose of the initial traffic stop.

- i. Three (3) police officers in separate cars.
- ii. Warning ticket (immediately began writing for lane violation)
- iii. Dog sniff occurred within a minute of speaking to the driver with no indicators of suspicious activity (complete deviation from purpose).
- iv. Did not check the bus driver's license or the license plate.
- v. Body Cam Video Recording
 1. 2:08:45 (Blue ticket in hand; Speaking w/ Driver)
 2. 2:10:02 (Dog sent to bus)
 3. 2:10:17 (Puts dog in the luggage compartment)
- vi. *State v. Rivera*, 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009)
 1. Purpose of the traffic stop was accomplished when the officer informed Rivera he would receive a warning citation and found the officer's questions regarding transporting drugs exceeded the scope of the initial traffic stop and constituted a second and illegal detention
- vii. *State v. Tindall*, 388 S.C. 518, 698 S.E.2d 203 (2010)
 1. Purpose of traffic stop was accomplished when the dispatcher reported no problem with DL and vehicle and only remaining task was to issue warning ticket
- viii. *United States v. Digiovanni*, 650 F.3d 498, 508-09 (4th Cir. 2011)
 1. Officer "definitely abandoned the prosecution of the traffic stop and embarked in another sustained course of investigation."

b. No objectively reasonable and articulable suspicion of illegal activity had occurred to extend the duration of the traffic stop.

i. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015)

1. A traffic stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.
2. Officer's mission includes to address the traffic violation that warranted the stop, checking the driver's license, inspecting the registration, and proof of insurance.
3. A dog sniff is not part of the officer's traffic mission because it is aimed at detecting evidence of criminal activity.
4. 7-8 minutes after the officer issued the warning ticket until the dog alerted.
5. The reasonableness of the seizure depends on what the police in fact do.
6. Whether the dog sniff prolongs – adds time to the stop
7. Not free to leave.

ii. *Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion)

1. "The scope of the detention must be carefully tailored to its underlying justification."

iii. *Distinct from State v. Alston*, 422 S.C. 270, 811 S.E.2d 747 (2018)

1. Inconsistent statements, unusual travel plans, from a drug hub, and observations of suspicious criminal activity

c. The detention did not become a consensual encounter as the bus driver and Defendant were not free to leave.

- i. Defendant did not consent to the prolonged encounter (based on the totality of the circumstances, Defendant was not free to leave).
- ii. Defendant handcuffed, number of officers, and not free to leave.
- iii. Officer threatens to arrest passenger for talking after requesting identification from all passengers.

d. Exclusionary Rule is reasonable and necessary given the unique and unlawful circumstances

- i. *United States v. Foster*, 634 F.3d 243, 248-49 (4th Cir. 2011)
 - 1. “[T]he exclusionary rule is our sole means of ensuring that police refrain from engaging in the unwarranted harassment or unlawful seizure of anyone”
 - 2. “The Government cannot rely on post hoc rationalizations to validate those seizures that happen to turn up contraband.”
- ii. Prevent this harassment behavior of fishing expeditions.

(3) Unconstitutional Warrantless Search

a. No Probable Cause to support a warrantless search of the Defendant’s luggage.

- i. Preliminary Hearing – Deputy XXX’s Testimony
 - 1. Dog did not alert on Defendant’s luggage (Tr. 3, ll. 25-37).
 - 2. Didn’t have the dog sniff each bag because it would have taken longer. (Tr. 3, ll. 25-37).
- ii. Body Cam
 - 1. 2:22:00 - Cut locked bag open.

(4) Unreasonable Invasion of Privacy

a. Unreasonable Invasion of Privacy (Heightened Protection pursuant to S.C. Const. Art. I, § 10).

- i. *State v. Robinson*, 410 S.C. 519, 765 S.E.2d 564 (2014)
 - 1. Burden of demonstrating he had an expectation of privacy in the area searched.
- ii. Preliminary Hearing Transcript – Deputy XXX’s testimony
 - 1. “That’s my bag, but I didn’t put a lock on it.” (Tr. 2, ll. 43-46)
 - 2. Defendant claimed the bag but not the drugs. (Tr. 4, ll. 29-31; Tr. 8, ll. 17-21).

3. Searched about 25-30 bags. (Tr. 6, ll. 35-41).
4. No key found. (Tr. 7, ll. 21-25).

b. Drug Dog did not properly or reliably alert to establish Probable Cause for a search of Defendant's luggage.

i. *United States v. Mason*, 628 F.3d 123, 130 (4th Cir. 2010)

1. Whether the drug dog alerted is a question of fact for the Court to resolve.

ii. Undisputed that the drug dog's alleged alert is the sole basis for which the officers believed they had probable cause to search the bus.

iii. Arguments

1. No free air sniff around the bus or alert on the outside of bus.
2. Drug dog did not actively sniff for narcotics at the seams of the luggage.
3. Odor alert could have been from any bag; particularly, the unclaimed bag containing the large amount of marijuana.
4. Handler should have done an individualized parcel search after separating the luggage and waiting for the air to clear.
5. Alleged alert is not reliable because of the improper procedure used by the handler.

c. Even if the Drug Dog did alert, the Drug Dog's alert is unreliable and did not establish Probable Cause for a search of the Defendant's luggage.

- i. Dog was trained only on a small amount of narcotics and is unreliable based on the amount drugs found in a confined space (luggage compartment).

(5) Involuntary Statements to Police

- a. Body Cam – 2:30:00
- b. Custodial Interrogation – Prescription medication
- c. Handcuffed – 2:31:56

- d. Admitted ownership of the bag but denied putting lock on the bag (2:38)
- e. No key on found Defendant or on the bus that fit the lock on the bag.
- f. *Simmons v. United States*, 390 U.S. 377 (1968)
 - i. When a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not be thereafter admitted against him at trial on the issue of guilt unless he makes no objection. Pp. 390 U. S. 389-394.

CONCLUSION

Based on the foregoing reasons, the Defendant respectfully moves to suppress all unlawfully seized evidence by the government and involuntary statements made by the Defendant to any government agent in violation of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3, 10, and 14 of the South Carolina Constitution (due process, unlawful search and seizure, unreasonable invasion of privacy, right to against self-incrimination, right to counsel, and fair trial).

IT IS SO MOVED.

Respectfully Submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.
Price Benowitz LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

ATTORNEY FOR THE DEFENDANT

XXX, 2021